

United States Senate

WASHINGTON, DC 20510

July 16, 2007

Chairman Kevin J. Martin
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

Re: WC Docket No. 07-52

Dear Chairman Martin:

The issue of Internet Freedom, which is also known as Network Neutrality, is crucial to the democracy and economic growth of the United States. We commend the Federal Communications Commission for recognizing its importance and opening a Notice of Inquiry.

We see that thousands of people have submitted comments describing how a free and open Internet benefits consumers and telling you that the discriminatory practices planned by their Internet service providers would substantially harm their online experience. We hope you take note of these thousands of public comments urging you to protect Internet freedom.

While we would have preferred the Commission to take the more concrete step of proposing rules to guarantee Internet Freedom, we are pleased to submit comments in the ongoing docket to demonstrate our continuing interest.

America's Internet Users

You have asked how consumers would be affected by a discriminatory Internet and we believe that the answers are clear. We also believe you should be asking how all Internet users are affected rather than just consumers – with a neutral network, any Internet user can be a producer or consumer. That is the beauty of a free and open Internet.

The Internet became a robust engine of economic development by enabling anyone with a good idea to try it out in a global marketplace. Innovative Internet users have been able to put their ideas online, attempt to attract consumers and compete for their business. In the past, the marketplace has picked the winners and losers – consumers have decided which sites and services should succeed and which should fail. Light regulations have prevented the control of a central gatekeeper and all users have benefited tremendously from that dynamic marketplace.

When users log onto the Internet, they take a lot of things for granted. They assume that they will be able to access whatever Web site they want, when they want to--and if they

have a good broadband connection, they expect this to happen at a high speed, regardless of what Web site they choose. They also assume that they can use any feature they like, anytime they choose--watching online videos, searching for information, making purchases, and sending e-mails and instant messages. What they are assuming is Internet Freedom, the principle at the core of the Internet's DNA. The idea is that the Internet should be open and free, restricted by no one.

Unfortunately, they are no longer safe to assume this Internet Freedom given the FCC's removal of nondiscrimination rules that applied to Internet providers for years. These are the rules that led to the explosion of creativity and economic activity that enhanced all parts of our country, with particular benefits to rural areas. The public has asked that you reinstate a protection against online discrimination.

Broadband Operators' Intentions

In your Notice of Inquiry, you also asked whether providers charge different prices for different speeds or capacities of service. We find this query strange, given that many providers have stated their interest in and plans to charge different prices for different capacities of service.

A number of broadband operators over the past year have continued to announce their interest in acting in discriminatory ways, planning to create tiers on the Internet that could restrict content providers' access to the Internet unless they pay extra for faster speeds or better service. If they get their wishes, the Internet would become a new world where those content providers who can afford to pay special fees would have better access to consumers.

For example, on November 7, 2005, then-AT&T CEO Ed Whitacre was quoted as saying, "They don't have any fiber out there. They don't have any wires. They don't have anything.... They use my lines for free—and that's bull. For a Google or Yahoo! or a Vonage or anybody to expect to use these pipes for free is nuts!" While net neutrality proponents were successfully able to restrict the merged entity of AT&T-BellSouth from engaging in content discrimination for two years, Mr. Whitacre's statement should send a signal that the means and desire to engage in anticompetitive activities is upon us.

In another example, showing the incentive to favor their own services and to act in an anti-competitive fashion, Cablevision's Tom Rutledge made the following statement regarding their control over Vonage: "So, anyone who buys Vonage on our network using our data service doesn't really know what they are doing.... Our service is better, its quality of service. We actually prioritize the bits so that the voice product is a better product."

Broadband providers are now technologically capable and financially incentivized to exercise considerable control over how, when, and even if information can be viewed and shared. They have always had the financial incentives; the technical ability is relatively new, as is the FCC's permission to providers to exert such control over content. With

these developments, consumers' ability to use content, services and applications could now be subject to decisions made by their broadband providers.

Competition

If there were a competitive broadband market we would not need to be as concerned about the discriminatory intentions of some providers. In a market with many competitors, there is a reasonable chance that market forces would discipline bad behavior. But this is not the case today: FCC statistics on broadband show that the local cable and telephone companies have a 96 percent share of the national broadband residential access market.

Some believe the market will take care of competition and ensure that those who own the broadband networks won't discriminate - that cannot be so when at best consumers have a choice of two providers.

Without the rules that prohibit discrimination, the broadband operator could become a gatekeeper, capable of deciding who can get through to a consumer, and under what conditions. This fundamentally changes the way the Internet operates. This is particularly true as broadband operators have their own services, video, VOIP, and media content.

In Conclusion

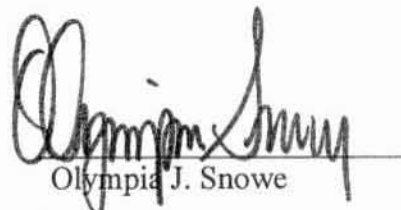
While Congress continues along our legislative path to preserve Internet Freedom, we urge the Commission to take affirmative action to reinstate the rules that enabled the Internet to flourish, innovation, and the movement of ideas, information and commerce to thrive.

We appreciate the FCC's efforts to study Network Neutrality and to invite public comment. Given the lack of broadband competition, the ability and incentive of broadband providers to discriminate among content providers, the public statements from executives of leading broadband providers, and the concerns of Internet users across the country, we are confident the FCC will gain a better understanding of the necessity to protect freedom on the Internet.

We look forward to continuing to work with the Commission and urge you to take affirmative action to reinstate the rules that enabled the Internet to flourish, allowing innovation and the movement of ideas, information and commerce to thrive.

Sincerely,


Byron L. Dorgan


Olympia J. Snowe